

1 the old field operations bureau. We didn't do that. We  
2 were trying to get the information, now, that's number one.  
3 Number two, and I've said this, and I've said this privately  
4 and I believe I've said it on the record and if I haven't  
5 said it on the record, I'm going to say it on the record  
6 now. When we answered the questions, we answered the  
7 questions to the best of our knowledge. Mr. Naftalin,  
8 rather than calling or bringing it to my attention, at the  
9 end of the deposition, went on the record to inform me that  
10 he knew of other matters, and I could only respond to him  
11 that I would note that, in light of his questions, I would  
12 immediately investigate, which I did, and disclosed.

13 Mr. Naftalin knew that. Mr. Naftalin didn't ask  
14 me in an Interrogatory or he didn't ask me off the record,  
15 "What about these things," where I could have responded.  
16 Instead, he put it right on the record, and I responded on  
17 the record and I responded with an answer within however  
18 long it took me to investigate it.

19 Now, with respect to -- Serge has always been and  
20 right from the very beginning in my oppositions to the  
21 request for special permission both in front of His Honor  
22 and in front of the Commission. We said we had no objection  
23 to written interrogatories. But our concern with oral  
24 interrogatories has been the disruption to the operations of  
25 CIB as well as our trying to put this together. This is

1 also our concern that if there were interrogatories and  
2 there were questions to Serge, they should have been put in  
3 the form of interrogatories, which we did answer and we  
4 would have continued to answer, instead of admissions, we  
5 will deal with the admissions element shortly.

6 But, in terms of materials and in terms of my  
7 responding, I responded as soon as the information was put  
8 in front of me. There was a misunderstanding. Mr. Naftalin  
9 never called me, never asked me. He put it on the record  
10 after a deposition. I just want that clear.

11 MR. NAFTALIN: May I respond to that?

12 JUDGE STEINBERG: Yes, but I sense bad blood and I  
13 would prefer if the bad blood were left outside the  
14 courtroom, so if, you know, I'll let you respond but that --  
15 there's got to be some kind of an end to this.

16 MR. RILEY: I want to first say that I was wrong  
17 about the sequence. I meant really to attribute to Mr.  
18 Aronowitz' effort to turn something up when I said it came  
19 up through his investigation. It is true as I now recall  
20 that it was first brought up on the record at the deposition  
21 which then Mr. Aronowitz followed up on. My point wasn't --  
22 and I hope I made that clear, my point was not to be  
23 critical of Mr. Aronowitz. My point was the difficulty in  
24 discovery against the Commission when -- when the first sets  
25 of interrogatories were submitted, which precedes the point

1 of the deposition Mr. Aronowitz spoke of.

2 If Mr. Loginow was the only person, as does seem t  
3 be the case, with direct observed personal knowledge of  
4 events rather than indirect hearsay personal knowledge, that  
5 very first set of interrogatories ideally would have been  
6 given to Mr. Loginow to deal with and answer as to matters  
7 that are within direct personal knowledge observation. But  
8 the structure of the Rules isn't such that a private party  
9 can do that because you must service the chief of the  
10 Bureau.

11 I really do think it was in Mr. Aronowitz'  
12 opposition to the application for review -- or not  
13 application for review but the special petition to the  
14 Commission for a deposition that the Bureau first explicitly  
15 said if you want answers from Mr. Loginow we invite you to  
16 direct written interrogatories to Mr. Loginow, which we then  
17 --

18 MR. ARONOWITZ: Pursuant to the Rules.

19 MR. RILEY: Pardon me?

20 MR. ARONOWITZ: Pursuant to the Rules.

21 MR. RILEY: Well, whether it's -- I don't think  
22 you can do "a pursuant to the rules," and that was my point,  
23 --

24 JUDGE STEINBERG: Let's --

25 MR. RILEY: And we, then, did do just that.

1 JUDGE STEINBERG: Now, last word.

2 MR. NAFTALIN: All I wanted to say -- this came --  
3 what I said -- this came up during Mr. Turro's deposition,  
4 and what I said on the record there and I stand by here  
5 today was I learned of Mr. Turro's knowledge, literally,  
6 briefly a day or so before preparing for that deposition and  
7 I was very surprised. It came up during the deposition when  
8 Mr. Turro said, "Oh, yes. Mr. -- " he said something like  
9 Mr. Loginow had come by another time and Mr. Aronowitz  
10 eventually questioned him about it.

11 I said on the record at that time that I in no way  
12 questioned the integrity of counsel, either Mr. Aronowitz or  
13 Ms. Friedman in any way, and I said it then, and I say it  
14 again here. The problem we have with discovery here is I  
15 would have been delighted if I had known long in advance to  
16 say "Gee, I think I know something. Would you find it out,  
17 and do that off the record. The timing of that wasn't very  
18 much available.

19 But my point is, given a witness that is under the  
20 employment, direction and control of the FCC, and acting  
21 pursuant to requests of the Bureau, and reporting to the  
22 Bureau, it may be fortunate that by good luck we -- someone  
23 in our case remembered something else that helped the Bureau  
24 find extremely important factual information. Nonetheless,  
25 the duty of the Bureau was to determine those things

1 independently. I'm glad it came out, however it came out.  
2 But, the problem with knowledge and the more limited  
3 discovery available given dealing with an agency, which Mr.  
4 Riley has discussed, has caused trouble in this matter and I  
5 -- but, again, all I want to do is be clear on the record.  
6 We never questioned the integrity of counsel, but we were  
7 very concerned that we got to the middle of the discovery  
8 period before investigations of what turned out to be three  
9 more inspections of Mr. Loginow, including one from the  
10 previous month were forthcoming.

11 MR. ARONOWITZ: Can I respond very briefly?

12 JUDGE STEINBERG: (Nodding.)

13 MR. ARONOWITZ: First of all, the latter wasn't --  
14 as I have explained, the latter wasn't an inspection, it was  
15 a monitoring. There is a subtle difference but a critical  
16 difference from the Bureau's standpoint. All right. That's  
17 been explained. Number two, and just for the background,  
18 let me explain that these are events over two, three years  
19 ago. When I approached Mr. Loginow about that, his response  
20 was, "Oh, yeah. I forgot." That's what happens. All  
21 right? That's what happened here. There's nothing more to  
22 it. The bottom line is everything has been disclosed. If  
23 there's any concerns about what's been disclosed, those  
24 could have been in the subject of interrogatories based on  
25 the disclosure, it's just there. It is what it is.

1 JUDGE STEINBERG: Okay. Any other? We were doing  
2 1, 2, 3 and 4. Have we dealt with everything you were  
3 concerned with 1, 2, 3 and 4?

4 MR. NAFTALIN: Yes, Your Honor.

5 JUDGE STEINBERG: Okay. Should we go to the next  
6 one, which is August -- this is kind of in the same  
7 classification, August 7th, Interrogatory Question 42.  
8 That's page 6 of your Motion. I mean, have we dealt with  
9 that?

10 MR. NAFTALIN: I think we've dealt with it.

11 JUDGE STEINBERG: Okay. Now, there were some  
12 other matters which you raised which are not covered by  
13 specific interrogatories that I can see. I mean, not -- not  
14 tied in your Motion to specific Interrogatories but  
15 questions which you raised. On page 7 you talk about  
16 vertical terrain profiles.

17 MR. NAFTALIN: Yes.

18 JUDGE STEINBERG: Now, you've gotten those,  
19 haven't you?

20 MR. NAFTALIN: Yes, that's how we got the --  
21 Universal produced it, which is how we learned about it, and  
22 produced it right at the beginning of the proceeding.

23 JUDGE STEINBERG: Okay. Anything more need to be  
24 done with the vertical terrain profile?

25 MR. ARONOWITZ: Do you want copies from us?

1 MR. NAFTALIN: No, we have copies of it. I -- the  
2 question was or the purpose of the interrogatory was to try  
3 and learn what effect that --

4 JUDGE STEINBERG: Okay. Which interrogatory  
5 because I didn't see that this was tied --

6 MR. NAFTALIN: Well, we have general  
7 interrogatories, Your Honor, that ask what evidence do you  
8 have which supports the allegation that the -- citing the  
9 rules -- that the translators were in violation of the  
10 74.1231 of the Commissions Rules. We've had those -- for  
11 each translator, we'd had those questions out there since  
12 May 23rd. In the documentation from Universal, there is a  
13 Fax that I think it was Mr. Helmick sent to Mr. Barone which  
14 said, "Here's a smoking gun for your arsenal if the vertical  
15 terrain profile map." My understanding -- I believe the  
16 thrust of that was to try and support an allegation that Mr.  
17 Turro's translators were not operating in compliance with  
18 74.1231(b) of the Rules.

19 The Bureau never -- the Bureau didn't describe for  
20 us the effect of that -- of that I think it was the 1996 Fax  
21 that it received from Mr. Helmick.

22 JUDGE STEINBERG: When you say the effect of it,  
23 what you mean to say it they -- what they thought about it?  
24 What impact it had on the HDO or something like that?

25 MR. NAFTALIN: What the evidentiary value -- the

1       evidentiary effect --

2               JUDGE STEINBERG:   Why should they -- isn't that  
3       sort of like work product in that here you've got -- you've  
4       got a piece of paper that the Bureau had and you're asking  
5       what the individuals looking at that piece of paper thought  
6       of that piece of paper?

7               MR. NAFTALIN:   Well, Your Honor, I don't think it  
8       could be work product.   It came from an independent party in  
9       an effort --

10              JUDGE STEINBERG:   Well, the thinking -- what  
11      you're asking for is -- let's say -- let's say Mr. Barone  
12      got the vertical terrain profile and he looked at it and he  
13      said, "Gee, this is the smoking gun.   This shows that blah,  
14      blah, blah."

15              MR. NAFTALIN:   Right.

16              JUDGE STEINBERG:   Why should you be entitled to  
17      his mental -- to a disclose of his mental processes?

18              MR. NAFTALIN:   If it's --

19              JUDGE STEINBERG:   That's what I'm talking, mental  
20      processes.

21              MR. NAFTALIN:   Okay.   Well, let me address that.  
22      I'd be happy to address that, Your Honor.

23              JUDGE STEINBERG:   Yes.

24              MR. NAFTALIN:   If this were Mass Media Bureau,  
25      Incorporated instead of a federal agency, we would have had



1 an opportunity to depose Mr. Barone and ask him those  
2 questions. We don't have that opportunity. The only thing  
3 we can do is sent interrogatories to the Bureau and ask  
4 questions, what have you got which supports these  
5 allegations, and they never said anything about the vertical  
6 terrain profile.

7 JUDGE STEINBERG: But you got the vertical terrain  
8 profile.

9 MR. NAFTALIN: That's true.

10 JUDGE STEINBERG: Okay. I -- I have to disagree  
11 with you on that.

12 MR. NAFTALIN: Okay.

13 JUDGE STEINBERG: And, --

14 MR. NAFTALIN: We didn't get it -- well, okay --  
15 never mind.

16 JUDGE STEINBERG: Well, you didn't get it from the  
17 Bureau.

18 MR. NAFTALIN: That's correct, Your Honor.

19 JUDGE STEINBERG: But, it was -- was it a separate  
20 document attached to a Fax or was it part of a complaint?

21 MR. NAFTALIN: Mr. Helmick can --

22 JUDGE STEINBERG: I mean, obviously I don't know.

23 MR. NAFTALIN: Mr. Helmick can correct me if I  
24 remember it wrong. There was a Fax cover sheet from him to  
25 Mr. Barone that said, "Here's the smoking gun for your

1     arsenal," and then I think a one-page --

2                 MR. HELMICK:  It's a one-page terrain profile,

3     Your Honor.

4                 JUDGE STEINBERG:  Okay.

5                 MR. NAFTALIN:  That attached to it.

6                 JUDGE STEINBERG:  Okay.  Now, and the Bureau never  
7     gave that to you?

8                 MR. NAFTALIN:  I don't think so.  It came from  
9     Universal and the Bureau --

10                MR. HELMICK:  The fact of the matter is, we turned  
11     it over, as Mr. Naftalin said, on the initial discovery  
12     phase.  They had it from day one.  Whether it came from us  
13     or the Bureau I think is irrelevant.  They have the  
14     document.

15                JUDGE STEINBERG:  Okay.  I don't think I want to  
16     talk about the vertical terrain profile anymore.  Now, on  
17     page 8 of your Motion you raised certain questions relating  
18     to Norman Goldstein's request for the investigation, and  
19     what were your concerns there?

20                MR. NAFTALIN:  Your Honor, we're now satisfied  
21     with that, and I'm not sure which the sequence was but we  
22     have gotten documentation from the Bureau and it either came  
23     after this or it came before, and I missed it.  I'll admit  
24     that's certainly possible.  That gives a perfectly good  
25     explanation.

1 JUDGE STEINBERG: Okay. Now we go to -- you  
2 requested the Bureau reconcile its answers to  
3 Interrogatories 1 through 4, 31 and 42 in light of certain  
4 contradictions. Are you satisfied that that's been done  
5 here today or in the letter?

6 MR. NAFTALIN: I'll accept where we are now, Your  
7 Honor. Yes, sir.

8 JUDGE STEINBERG: Okay. Now, that completes what  
9 I think you wanted in the Motion to Compel. Did I miss  
10 anything?

11 (No verbal response.)

12 Do you want to take a break and --

13 MR. NAFTALIN: Not really. That's fine, Your  
14 Honor. Thank you.

15 JUDGE STEINBERG: Okay. So you're satisfied with,  
16 you know, that I didn't miss anything? If I missed  
17 anything, you don't care?

18 MR. NAFTALIN: Yes. I'm -- I'm content, Your  
19 Honor, with that Motion. Thank you.

20 JUDGE STEINBERG: Okay. Now, let's go to it's a  
21 Motion to Compel and for related relief which was filed on  
22 September 12, 1997 and here you're basically requesting the  
23 Bureau to either further respond or explain why the denied  
24 certain admission requests; is that correct?

25 MR. NAFTALIN: Or said "Unknown".

1 JUDGE STEINBERG: Or said "Unknown". Now, before  
2 we start on this one, I just want to tell you where I'm  
3 coming from on this. The primary reason I let these be  
4 answered was in the hopes that some kind of a stipulation  
5 was going to be reached with respect to uncontested facts,  
6 and that would limit the scope of the hearing to stuff that  
7 was really hotly contested. In light of what I've seen on  
8 paper and in light of what I have seen here today, I really  
9 am not very optimistic about your ability to cooperate, the  
10 Bureau's ability and the other party's ability to cooperate  
11 and do a set of stipulations. And, so I'm just telling you  
12 what's in my head. I -- so, I don't really want to spend a  
13 whole lot of time or have the Bureau spend a whole lot of  
14 time doing something that's not going to result in anything.  
15 And, when I say it's not going to result in anything, my  
16 feeling about that is if you have a piece of paper that says  
17 one thing, let's say Serge Loginow's reports, those Faxes,  
18 they say one thing and then you ask a question about them in  
19 your Request for Admissions and the Bureau says "Denied" or  
20 "Unknown," well, obviously the piece of paper is going to be  
21 100 percent of the weight and the Bureau's Answer is going  
22 to be given zero percent of the weight because the paper  
23 says what it says.

24 So, if your concern is that I'm going to be  
25 influenced by a piece of paper in which the Bureau says, "We

1 deny this," then you are wrong. I'm not going to be  
2 influenced. I'm going to be influenced by the evidence that  
3 comes in in the record and documentary evidence and  
4 testimonial evidence, et cetera. So, you know, I just don't  
5 know if it's fruitful to --

6 MR. ARONOWITZ: Your Honor, --

7 JUDGE STEINBERG: -- spend a lot of time on this.  
8 I mean, if there's really no realistic possibility of  
9 reaching stipulations. I -- and I should say, I've been in  
10 this line of work, namely doing FCC hearings for a long time  
11 and it's -- I don't think I could count -- I could count  
12 probably on the fingers and on half of my hand the times  
13 that parties reached any kind of meaning stipulations, but -  
14 -

15 MR. ARONOWITZ: Your Honor, if I might? I  
16 respectfully disagree. I think there are a lot of things  
17 here that we can stipulate on. There are a lot of what  
18 ultimately greatly are uncontested facts once everybody is  
19 satisfied. My problem, and the problem I have, particularly  
20 with the admissions, is that a lot of the things presented  
21 in the form of admissions are things that we cannot -- the  
22 Bureau cannot, with personal knowledge, admit or deny one  
23 way or the other. We have statements. They speak for  
24 themselves.

25 A number of these admissions are really not

1 admissions but really further Interrogatories; "Where was  
2 Loginow? Was he on the roof? Was he on the side of the  
3 building?" And there are certain things that we can clearly  
4 stipulate that Serge did certain things and that he observed  
5 certain things. But, in some cases, we can't make -- we  
6 can't answer a further Interrogatory. Even if it comes in  
7 in the form of admissions and maybe if we get to some of  
8 them, in specific, I could be -- I can speak to them in the  
9 context of specific admissions.

10 JUDGE STEINBERG: Okay. Let's do that. Again,  
11 I've made a list of the Admissions Request that Mr. Naftalin  
12 has brought in his motion, and we'll take them one at a  
13 time. Okay. We have Admission Request No. 6. It appears  
14 to me that the Bureau's response was inconsistent with what  
15 Mr. Naftalin calls the Loginow Report, and I want the Bureau  
16 to explain, if it can.

17 And, again, with the background that what the  
18 Loginow Report says, it says.

19 MR. NAFTALIN: My response to that, Your Honor, is  
20 we have one specific concern and the specific concern is  
21 that if the Bureau is going to go on the record and  
22 expressly deny the relatively contemporaneous written  
23 statement of Mr. Loginow --

24 JUDGE STEINBERG: How can they -- how can they  
25 deny it?

1 MR. NAFTALIN: Well, that's what they did, Your  
2 Honor, and we're concerned if there's an evidentiary basis  
3 for that denial, we don't know what it is.

4 JUDGE STEINBERG: Well, what witness are they  
5 going to put up to say that the reports that are in Mr.  
6 Loginow's, you know, that the statements in Mr. Loginow's  
7 April 13th and 14th inspections are not accurate? The  
8 Bureau is going to do that?

9 MR. NAFTALIN: That's my -- that's what we're  
10 worried about, Your Honor.

11 JUDGE STEINBERG: Are you going to do that, Mr.  
12 Aronowitz.

13 MR. ARONOWITZ: I don't see how I can.

14 JUDGE STEINBERG: Nobody was there. No other  
15 Commission employee was there.

16 MR. NAFTALIN: Then, why are they denying it?

17 JUDGE STEINBERG: Well, I --

18 MR. ARONOWITZ: Some of them are in the form of  
19 questions.

20 JUDGE STEINBERG: I can see when we get further  
21 on, for instance, when we get to No. 7 and 8, -- 7 and 8,  
22 we're talking about, quote, "Directly through space, as that  
23 term is used in Section --" well, what you're doing is  
24 you're turning Mr. Loginow's language around. Mr. Loginow  
25 said -- I think he said "Off the air" --

1 MR. ARONOWITZ: "Over the air".

2 JUDGE STEINBERG: But you -- "Over the air." --

3 MR. ARONOWITZ: He said "Over the air" -- "Off the  
4 air," that says "Off the air".

5 JUDGE STEINBERG: Yes, but you said "Directly  
6 through space". Now, I would deny that because that's not  
7 what Mr. Loginow said. Directly through space as that term  
8 is used in Section 75.1231(b) that's a term of art as used  
9 in the Commission's Rules.

10 Mr. Loginow, you might ask him on the witness  
11 stand as an expert, if you consider him as an expert  
12 witness, what his -- whether his conclusion was that what he  
13 observed that day complied with Section 74.1231(b) of the  
14 Rules in that the translator, you know, was receiving  
15 something, quote, "Directly through space," closed quote, as  
16 that term is used in the Rule. But you can't change the  
17 language of the report and expect the Bureau to admit it.

18 MR. ARONOWITZ: That's my point.

19 JUDGE STEINBERG: Now, that might be a semantic  
20 thing, but it's something that if I was answering them, I  
21 wouldn't answer. I would say "deny" or "admit to the extent  
22 that, blah, blah, blah" or to the extent that Loginow said,  
23 quote, "Off the air," and with respect to whether they were  
24 complying with the Rule, that's a legal opinion, a legal  
25 conclusion that Mr. Loginow is not competent to answer and



1 that I have to resolve.

2 Now, that's where I'm coming from on stuff like  
3 that. And there are other instances where language of the  
4 Admissions Request does not track the language of the report  
5 or the answer or whatever, and so, I have problems with that  
6 because I wouldn't admit to that stuff if I were them.

7 MR. ARONOWITZ: Your Honor, and, furthermore, that  
8 is exactly my position. And, what I'm suggesting is, that  
9 we can't stipulate that Loginow determined that what Fort  
10 Lee was receiving Pomona over the air and that Pomona was  
11 receiving Monticello and Monticello was receiving whatever  
12 it was supposed -- we -- we can stipulate to that. Why we  
13 need to, if that's what Serge -- if that's what his  
14 inspection report says --

15 JUDGE STEINBERG: No, no, no. What you're saying  
16 is we could admit to that but why you would need to, is that  
17 what you meant?

18 MR. ARONOWITZ: Well, I'm saying that we can  
19 stipulate that Serge saw that but we don't need to stipulate  
20 because that's the document that Serge has that coming in.  
21 So, if it helps, we can stipulate that that's what Serge's  
22 document says.

23 JUDGE STEINBERG: Why don't you respond?

24 MR. NAFTALIN: A couple of quick, number one, Your  
25 Honor, you moved into Request 7 and 8 --

1 JUDGE STEINBERG: 7 and 8, right. That was part  
2 of the same grouping.

3 MR. NAFTALIN: I understand. I have something to  
4 say about that, but let me start with 6 since it was the  
5 first one.

6 JUDGE STEINBERG: Okay.

7 MR. NAFTALIN: That's the one -- that admission  
8 request takes what Mr. Loginow said in his radio station  
9 inspection report and cites it and asks the Bureau to admit  
10 to it, and the Bureau denied.

11 JUDGE STEINBERG: Right.

12 MR. NAFTALIN: Now, it says "Off the air," just  
13 what Mr. Loginow said. And the Bureau said, "We deny. He  
14 made no observations about the STL when his radio station  
15 inspection report describes his observations about the STL  
16 --

17 JUDGE STEINBERG: So let me --

18 MR. NAFTALIN: So, one, our concern is what's the  
19 basis for that denial, and, if there isn't a basis for that  
20 denial, maybe we -- maybe that should be admitted to and we  
21 really do have an opportunity to stipulate to exactly that.

22 JUDGE STEINBERG: Okay. Let me -- Mr. Aronowitz,  
23 why don't you explain the answer?

24 MR. ARONOWITZ: I --

25 JUDGE STEINBERG: Because I -- it does appear

1 inconsistent to me.

2 MR. ARONOWITZ: It does, and I think it was a date  
3 discrepancy. I mean, the problem was -- I think it was a  
4 date discrepancy on my part, miss reading of the days.

5 JUDGE STEINBERG: Do you want to --

6 MR. ARONOWITZ: His statement says what his  
7 statement says. What I comment on his statement should be  
8 irrelevant. I will go back to his statement and I will  
9 regurgitate his statement and then that is what will come  
10 into the record. My statement about his statement is, A,  
11 unnecessary and, B, to the extent conflicting, you know, I  
12 can only -- and we poured over these and there were so many  
13 aspects to this that when I was -- and here is the  
14 background. I sat down with all of Serge's statements and I  
15 tried to figure out what the answer to your question was.  
16 If I missed on a date. That's a problem with you have the  
17 Bureau trying to regurgitate a fact that is already there,  
18 and are eligible for evidence.

19 JUDGE STEINBERG: Well, that was the purpose of  
20 the Request for Admission, I think. So, why don't you  
21 revisit No. 6, and, you know, what I'll do is -- of course,  
22 you know, there are other things that you may have to  
23 revisit. Why don't you revisit No. 6?

24 MR. ARONOWITZ: I think -- I think No. -- let me  
25 read it more carefully before I respond, Your Honor.

1 JUDGE STEINBERG: Well I don't want you to do it -  
2 - I don't want you to do it here and off the cuff.

3 MR. ARONOWITZ: And I don't want to do it.

4 JUDGE STEINBERG: I want you to take it to the  
5 office and don't read it the way it's typed in the Motion to  
6 Compel. Read the original documents, and I don't want you  
7 to do it here off the cuff and without thinking about it.  
8 If you can't admit -- the Rule says if you can admit to part  
9 of it but not all of it, then you admit to that part of it  
10 and explain why you can't admit to all of it, or object to  
11 part of it. Admit to some of it and object to some of it.  
12 I just don't --

13 MR. ARONOWITZ: Your Honor, I absolutely don't  
14 have a problem with that, but I still -- I absolutely commit  
15 to do that. It's not a problem area. Again, I'll stipulate  
16 that that's what Serge said. I'll offer his report.

17 JUDGE STEINBERG: Well, --

18 MR. ARONOWITZ: It shouldn't turn on -- but I will  
19 correct it, so let's move on.

20 JUDGE STEINBERG: That's okay. Nos. 7 and 8, I  
21 have already expressed my concerns. Mr. Naftalin, why don't  
22 you address my concerns?

23 MR. NAFTALIN: Your Honor, the Federal Rules of  
24 Civil Procedure give -- I think give some guidance to the  
25 effect of admissions. The Commission's rule on admissions

1 doesn't give as much guidance or explanation as to how they  
2 should answers or the effect of them. And, the Federal Rule  
3 -- and this is, by the way, I have it in my reply brief but  
4 it's Federal Rule Civil Procedure 36(a). It says "A party  
5 who considers that a matter of which an admission has been  
6 requested presents a genuine issue for trial may not on that  
7 ground along object to the request."

8 Now, if there's a basis for the Bureau to contend  
9 that the term "off the air" is materially different from  
10 "directly through space," it's not here.

11 JUDGE STEINBERG: Okay. I'm -- I'm not going to  
12 require -- I'm not going to require the Bureau to further  
13 answer 7 and 8. I look at it in two ways, number one, it  
14 doesn't track the language of the Loginow report and, number  
15 two, it calls for a legal conclusion. It calls for -- it  
16 implies a legal conclusion.

17 MR. NAFTALIN: It does imply a legal conclusion.

18 JUDGE STEINBERG: Yeah, and I'm going to make the  
19 legal conclusions, and if you want to put -- no, if you want  
20 to put an expert engineer on the stand to say, "Given these  
21 hypothetical facts, in your opinion, was the signal  
22 received, quote, 'directly through space'" as that term is  
23 used in this section, I would -- I would welcome that kind  
24 of help. But I'm -- I just don't think it's appropriate to  
25 put that in a request for admissions. I'll leave it there.

1 MR. NAFTALIN: Very well.

2 JUDGE STEINBERG: Now, No. 9.

3 MR. NAFTALIN: The same, Your Honor.

4 MR. ARONOWITZ: The same, Your Honor.

5 JUDGE STEINBERG: Okay. So I'm not going to  
6 require that to be further answered.

7 No. 11 is the next one. Okay. That appears that  
8 the answer that the Bureau has given appears to be  
9 inconsistent with the Loginow report, and I would ask Mr.  
10 Aronowitz to explain the denial.

11 MR. ARONOWITZ: Absolutely. Your Honor, when we  
12 received the written Interrogatories, we located Mr. Loginow  
13 --

14 JUDGE STEINBERG: This is the written  
15 Interrogatories or the request for admissions?

16 MR. ARONOWITZ: The problem is, as I perceived the  
17 problem is that the answer in the Interrogatories and the  
18 answer in the admissions are different; is that the nature  
19 of the problem?

20 MR. NAFTALIN: Well, no. The statement Mr.  
21 Loginow committed to writing in this radio station  
22 inspection report is --

23 MR. ARONOWITZ: Let me explain what I -- and,  
24 again, this was a problem in dealing with this in the form  
25 of admissions as opposed to an Interrogatory. When we spoke

1 to Mr. Loginow with respect to the Interrogatories, Mr.  
2 Loginow did not recall personally observing the Monticello  
3 station was operating at reduced power. That was his  
4 answer. We didn't change it. We didn't challenge it. It  
5 was his answer, warts and all.

6 JUDGE STEINBERG: Okay.

7 MR. ARONOWITZ: And that is the basis -- that  
8 formed the basis for the answer of my admission. To the  
9 extent that the admission or the Interrogatory, warts and  
10 all, is inconsistent with his written statements,  
11 contemporary statements made two years earlier, it is what  
12 it is.

13 JUDGE STEINBERG: Okay. I can accept that  
14 explanation, so basically his report may have been  
15 inaccurate. You can explore that when you get him on the  
16 stand. That's what -- Mr. Loginow, did you tell Mr. -- you  
17 can show him. Did you tell Mr. Aronowitz that you didn't  
18 observe, blah, blah, blah. Now, why did you write that in  
19 your report? The inspecting, in quote, this is on page 3 of  
20 your Motion. Quote, "The inspecting engineer had observed  
21 that he operating power of the XTM was reduced," and then,  
22 "it appears that --"

23 MR. ARONOWITZ: Your Honor, and that comes out of  
24 the radio station, the top of the second page of the radio  
25 inspection.

1 JUDGE STEINBERG: Right.

2 JUDGE STEINBERG: And so --

3 MR. ARONOWITZ: What happens if we knew the answer  
4 but the Loginow said he did and then Mr. Naftalin you come  
5 in and say, yeah, but in the Interrogatories you said no.  
6 This is going to be a circle anyway because of the  
7 inconsistency we have.

8 JUDGE STEINBERG: Well, it seems like there's a  
9 factual matter that we ought -- ought to be straightened at  
10 the hearing or in depositions or something.

11 MR. NAFTALIN: Your Honor, --

12 JUDGE STEINBERG: Because they can't admit it  
13 because the person with personal knowledge says that's not  
14 the fact.

15 MR. NAFTALIN: He says that's not the fact or he  
16 doesn't remember that's the fact. That's the difference.

17 MR. ARONOWITZ: Well, that's a follow-up  
18 Interrogatory. That's not an admission.

19 JUDGE STEINBERG: Well, we'll save that. Okay.  
20 Now you know where the problem is.

21 MR. NAFTALIN: Today he doesn't remember --

22 JUDGE STEINBERG: Yes. Now, if I were you and the  
23 Bureau introduced the Loginow report, I wouldn't ask him a  
24 darn question about that and I would write in your findings  
25 whatever he said in his report.



1 MR. NAFTALIN: Sure.

2 JUDGE STEINBERG: But that's up to you.

3 MR. NAFTALIN: Right.

4 MR. ARONOWITZ: And then that just becomes a  
5 factual issue.

6 MR. NAFTALIN: Right.

7 JUDGE STEINBERG: Well, --

8 MR. NAFTALIN: If just seems to be an uncontested  
9 fact.

10 MR. ARONOWITZ: -- the quality of Serge's memory.

11 JUDGE STEINBERG: No, but if nobody asked him any  
12 questions about it.

13 MR. NAFTALIN: But as it stands now, it's an  
14 uncontested fact. I mean, the radio station inspection  
15 report is uncontested. That's why we sought an admission on  
16 it. If he says, "I don't remember anymore," that doesn't  
17 contest what he said.

18 JUDGE STEINBERG: If he says, "I don't remember  
19 today, but --"

20 MR. ARONOWITZ: That's what it was two years ago.

21 JUDGE STEINBERG: Yes.

22 MR. ARONOWITZ: You will be there to ask him all  
23 the questions you need to ask him.

24 MR. RILEY: Well, you're not going to impeach the  
25 written reports that Mr. Barone or the superior to Mr.